



Signed and Filed: September 01, 2006

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case  
PATRICIA McCOLM, ) No. 00-31332DM  
Debtor. ) Chapter 7  
LINDA EKSTROM STANLEY, ) Adversary Proceeding  
Plaintiff, ) No. 01-3005DM  
v. )  
PATRICIA McCOLM, )  
Defendant. )

MEMORANDUM DECISION RE DENIAL OF DISCHARGE

On August 9, 2006, this court entered an order to show cause why judgment should not be entered in this adversary proceeding,<sup>1</sup> directing Patricia Alice McColm ("Debtor") to file and serve any opposition to entry of judgment no later than August 30, 2006. Debtor filed an untimely opposition on August 31, 2006. Notwithstanding the tardiness of Debtor's opposition, the court has considered the merits of the opposition and concludes that

<sup>1</sup> Although the caption on the order contained the correct adversary proceeding number, it incorrectly identified Debtor's main case number as 03-31332 instead of 00-31332. This typographical error is of no substantive significance and was thus harmless.

1 Debtor has offered no sustainable legal or factual defense against  
2 entry of judgment.

3 First, despite Debtor's contentions to the contrary, the  
4 complaint of the plaintiff was timely filed. See Fed. R. Bankr.  
5 P. 1019(2) and 4004(a). Debtor simply ignores Rule 1019(2), which  
6 sets a new deadline for filing objections to discharge upon  
7 conversion of a case to Chapter 7. Debtor also asserts that Rule  
8 4004(a) required service of the complaint on all creditors.  
9 Debtor is incorrect; Rule 4004 requires that notice of the  
10 deadline for filing complaints, and not the complaint itself, be  
11 served on all creditors.

12 Debtor also contends that the plaintiff did not serve the  
13 complaint on her. The record reflects, however, that the  
14 complaint was attached to the summons which was served on Debtor  
15 on her then address of record on January 11, 2001. See Exhibit A  
16 to the Declaration of Stephen L. Johnson in Support of Request For  
17 Clerk's Default, filed on February 12, 2001.<sup>2</sup>

18 Debtor argues that entry of judgment is inappropriate because  
19 this court purportedly erred in converting her case and in denying  
20 certain exemptions. These rulings have no relevance, legally or  
21 factually, to the merits of this adversary proceeding. Moreover,  
22 they are the subject of separate final orders which were appealed  
23 by Debtor.

24 Finally, Debtor argues that this court should not enter the

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26 <sup>2</sup> Incidentally, Debtor has known about this case since at  
27 least April, 2001, when she prematurely filed a notice of appeal  
28 of the clerk's entry of default, yet she has not filed any answer  
or motion to strike the complaint, even after the appeal was  
dismissed as interlocutory and the matter remanded to this court  
on June 23, 2005.

1 judgment because it should recuse itself from all matters  
2 pertaining to her. For the reasons previously stated in response  
3 to this argument made on repeated occasions by Debtor, no grounds  
4 exist for recusal.

5 The record reflects that Debtor filed her current bankruptcy  
6 case (Case No. 00-31332) less than six years after filing a prior  
7 case (Case No. 98-34290) in which she received a discharge.  
8 Accordingly, as a matter of law and fact, Debtor is not entitled  
9 to a discharge in her current case pursuant to 11 U.S.C.  
10 § 727(a)(8). Therefore, this court will overrule Debtor's  
11 objections and enter a judgment denying her discharge.

12 \*\*END OF MEMORANDUM DECISION\*\*  
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